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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

19 IN RE: VOLKSWAGEN “CLEAN DIESEL”
20 MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

)
) MDL No. 2672 CRB (JSC)
)
)
)
) **DECLARATION OF WILLIAM B.**
) **MONAHAN IN SUPPORT OF**
) **DEFENDANTS' MOTION TO**
) **DISQUALIFY PLAINTIFFS' EXPERT**
) **LOUIS J. FREEH AND EXCLUDE HIS**
) **PROPOSED TESTIMONY AT TRIAL**
)
) The Honorable Charles R. Breyer
)

1 WILLIAM B. MONAHAN hereby declares under penalty of perjury as follows:

2 1. I am a member of the Bar of the State of New York and of Sullivan & Cromwell
3 LLP, counsel in the above-captioned action for Defendants Volkswagen Group of America, Inc. and
4 Volkswagen AG (“Defendants”). I have been admitted *pro hac vice* to appear in this action.

5 2. I submit this Declaration on behalf of the Defendants to put before the Court
6 certain documents and other evidence cited in Defendants’ Motion to Disqualify Plaintiffs’ Expert Louis
7 J. Freeh and Exclude His Proposed Testimony at Trial, filed concurrently herewith.

8 3. Attached hereto as Exhibit 1 is a true and correct copy of the expert report of Louis
9 J. Freeh (excluding exhibits), dated December 2, 2019.

10 4. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the
11 December 23, 2019 deposition of Mr. Freeh.

12 5. Attached hereto as Exhibit 3 is a true and correct copy of a draft engagement letter,
13 dated January 6, 2016, emailed by Mr. Freeh to Christine Hohmann-Dennhardt, the former Volkswagen
14 AG Management Board Member responsible for Compliance and Legal, bearing production numbers
15 KVV_00000235–KVV_00000240. This document is accompanied by a true and correct copy of a
16 certified English translation.

17 6. Attached hereto as Exhibit 4 is a true and correct copy of the transcript from the
18 April 21, 2017 sentencing hearing in *United States v. Volkswagen AG*, No. 2:16-cr-20394 (E.D. Mich.,
19 Cox, J.).

20 7. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the
21 Criminal Complaint filed on December 30, 2016 in *United States v. Schmidt*, 2:16-mj-30588 (E.D.
22 Mich.), Dkt. No. 1.

23 8. Attached hereto as Exhibit 6 is a true and correct copy the Rule 11 plea agreement
24 in *United States v. Volkswagen AG*, No. 2:16-cr-20394 (E.D. Mich., Cox, J.), dated January 11, 2017.

25 9. Attached hereto as Exhibit 7 is a true and correct copy of a January 2, 2016 email
26 exchange between Mr. Freeh and Ms. Hohmann-Dennhardt, bearing production numbers
27 KVV_00000449–KVV_00000450.

1 10. Attached hereto as Exhibit 8 is a true and correct copy of an *Automotive News*
 2 article entitled “VW Will Hire Ex-FBI Chief Freeh for U.S. Role, Report Says,” dated January 19, 2016.

3 11. Attached hereto as Exhibit 9 is a true and correct copy of a *Suddeutsche Zeitung*
 4 article entitled “Warum Volkswagen auf einen früheren FBI-Chef hofft,” dated January 18, 2016. This
 5 document is accompanied by a true and correct copy of a certified English translation.

6 12. Attached hereto as Exhibit 10 is a true and correct copy of a *Handelsblatt*
 7 publication entitled “Louis Freeh und Olaf Schneider; ‘Das Pendel ist zu weit ausgeschlagen’,” dated
 8 February 22, 2017. This document is accompanied by a true and correct copy of a certified English
 9 translation.

10 13. Attached hereto as Exhibit 11 is a true and correct copy of a text message sent by
 11 Mr. Freeh to Manfred Doess, the General Counsel of Volkswagen AG, dated December 15, 2016.

12 14. Attached hereto as Exhibit 12 is a true and correct copy of a May 7, 2019 press
 13 release issued by Glaser Weil LLP, co-counsel for Plaintiffs in this action, entitled “Louis Freeh and
 14 Glaser Weil Enter Into Strategic Alliance,” bearing production numbers GWPROD_000001–
 15 GWPROD_000002.

16 15. Attached hereto as Exhibit 13 is a true and correct copy of the New York State Bar
 17 website page reflecting Mr. Freeh’s credentials as an attorney currently barred in New York State, dated
 18 January 8, 2020.

19 16. I am generally familiar with the production made in this action by Mr. Freeh and
 20 his two companies (Freeh Group International Solutions, LLC and Freeh Sporkin Sullivan LLP) (the
 21 “Freeh Production”) to Defendants on December 17, 2019, bearing production numbers
 22 KFW_00000001–KFW_00000551, as well as the responses and objections served with the Freeh
 23 Production. Based on my review, as well as information provided to me by my team:

24 a. the Freeh Production contains approximately 550 pages of documents;

25 b. Mr. Freeh and his two companies made the Freeh Production only to
 26 Defendants and their counsel, not to Plaintiffs and their counsel, and I understand from statements made
 27 during Mr. Freeh’s deposition that this was done out of concern that much of the Freeh Production
 28 consisted of privileged and confidential documents;

1 c. the Freeh Production contains many emails and other communications
 2 from Mr. Freeh to Defendants' employees or outside counsel that were marked contemporaneously as
 3 "privileged" and/or "confidential";

4 d. the Freeh Production contains approximately 100 separate email messages
 5 between Mr. Freeh and Ms. Hohmann-Dennhardt, sent between November 4, 2015 and March 30, 2016;

6 e. the Freeh Production contains approximately 45 separate email messages
 7 between Mr. Freeh and Robert J. Giuffra, Jr., Volkswagen AG's lead outside counsel in the United States,
 8 sent between January 13, 2016 and January 28, 2016;

9 f. the Freeh Production contains at least three separate email conversations
 10 between Mr. Freeh and Matthias Muller, the former CEO of Volkswagen AG, between January 8 and 12,
 11 2016;

12 g. the Freeh Production contains an email exchange between Mr. Giuffra and
 13 Mr. Freeh on January 16, 2016 in which Mr. Freeh shared his view on steps the company should take in
 14 connection with the then-ongoing internal investigation by counsel for Volkswagen AG's Supervisory
 15 Board, as well as steps to preserve information potentially relevant to that investigation;

16 h. the Freeh Production contains an email from Mr. Giuffra to Mr. Freeh,
 17 dated January 16, 2016, in which Mr. Giuffra sent Mr. Freeh a privileged and confidential memorandum
 18 authored by one of the company's outside counsel regarding the diesel emissions matter, as well as a
 19 January 17, 2016 response email from Mr. Freeh in which Mr. Freeh shared his views on the
 20 memorandum and his advice on potential implications for the company's diesel-related investigations
 21 and lawsuits;

22 i. the Freeh Production contains an email from Mr. Giuffra to Mr. Freeh,
 23 dated January 16, 2016, in which Mr. Giuffra sent Mr. Freeh a document discovered during the course
 24 of the internal investigation, along with Mr. Giuffra's views on the potential implications of that
 25 document, and I am informed and believe that this document is a version of the same document attached
 26 as Exhibit 7 to Mr. Freeh's December 2, 2019 expert report; and

j. the Freeh Production contains an email from Mr. Freeh to Mr. Giuffra on January 16, 2016 that responds to Mr. Giuffra's January 16 email, in which Mr. Freeh shared his own views on the implications of the same document.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on January 13, 2020.

/s/ William B. Monahan

William B. Monahan